

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

COLONEL JAMES MCGINN	)	
Plaintiff	)	
	)	
V.	)	C.A. No.: 1:19-cv-11551-IT
	)	
EXECUTIVE OFFICE OF ENERGY AND	)	
ENVIRONMENTAL AFFAIRS,	)	
MASSACHUSETTS ENVIRONMENTAL	)	
POLICE, and SECRETARY MATTHEW	)	
A. BEATON in his Official and Individual Capacity)	)	
Defendants	)	

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PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

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Plaintiff James McGinn, ("Plaintiff"), hereby moves this Honorable Court to deny the Defendant Matthew Beaton's (in his individual capacity) Motion to Dismiss. As explained in more detail in Plaintiff's accompanying Memorandum of Law, Defendant cannot overcome the obvious genuine issues of material fact that exist.

The Plaintiff brings this action seeking redress for substantial violations of his rights pursuant to the Federal Civil Rights Act, 42 U.S.C. § 1983, as well as under the Massachusetts Civil Rights and Whistleblower Acts, M.G.L. C. 149, § 185, by retaliating against him for reporting, objecting to, refusing to participate in, and filing complaints about what the Plaintiff reasonably believed were ongoing violations of law and ethical violations within the MEP.

As clearly alleged in the Plaintiff's Complaint ("Complaint"), in defiance of repeated direct orders from his supervisor, former EEA Secretary Matthew Beaton ("Defendant Beaton"), to "keep a lid on things" Plaintiff spoke out (both within and outside of the MEP) regarding the threat to public safety that was created by multiple MEP officers not performing their duties,

fraudulent activity, as well as their potentially criminal conduct. In retaliation, and consistent with a custom of chilling free speech, the MEP terminated McGinn.

The plaintiff has attached a memorandum of law with supporting authorities in collaboration with this opposition.

Respectfully submitted,  
For the Plaintiff,  
By His Attorney,

/s/ Timothy M. Burke

Timothy M. Burke, Esquire  
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**LOCAL RULE 7.1(A)(2) CERTIFICATION**

Pursuant to Local Rule 7.1(a)(2), I hereby certify that I have conferred with counsel for all parties in this matter in a good faith attempt to resolve or narrow the issues; and that counsel for all parties have assented to or joined in this motion.

Dated: November 1, 2019

/s/ Timothy M. Burke  
Timothy M. Burke

**CERTIFICATE OF SERVICE**

I hereby certify that this document was filed through the ECF system and will therefore be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent this day to those participants indicated as non-registered participants.

Dated: November 1, 2019

/s/ Timothy M. Burke  
Timothy M. Burke